

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS  
TUESDAY, MARCH 13, 2018  
City Commission Room  
151 Martin Street, Birmingham, Michigan**

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Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, March 13, 2018. Chairman Charles Lillie convened the meeting at 7:30 p.m.

**Present:** Chairman Charles Lillie; Board Members Kevin Hart, Jeffery Jones, Randolph Judd, Vice-Chairman Peter Lyon, Erik Morganroth, Alternate Member Jason Canvasser

**Also**

**Present:** Alternate Board Member Francis Rodriguez

**Absent:** John Miller

**Administration:** Matthew Baka, Sr. Planner  
Bruce Johnson, Building Official  
Mike Morad, Asst. Building Official  
Carole Salutes, Recording Secretary  
Jeff Zielke, Building Inspector

The Chairman welcomed everyone and explained the BZA procedure to the audience. Additionally, he noted that the members of the Zoning Board are appointed by the City Commission and are volunteers who serve staggered three-year terms. They sit at the pleasure of the City Commission to hear appeals from petitioners who are seeking variances from the City's Zoning Ordinance. Under Michigan law, a dimensional variance requires four affirmative votes from this board, and the petitioner must show a practical difficulty. A land use variance requires five affirmative votes and the petitioner has to show a hardship. There are no land use variances called for this evening. Also, appeals are heard by the board as far as interpretations or rulings. Four affirmative votes are required to reverse an interpretation or ruling. There are no interpretations on this evening's agenda.

**T# 03-18-18**

**APPROVAL OF THE MINUTES OF THE BZA MEETING OF FEBRUARY 13, 2018**

Mr. Lyon:

Page 5 - Add to the end of the second paragraph from the bottom : "in this case."

Mr. Canvasser:

Page 1 - Scratch "The Chairman welcomed" and substitute "The Vice-Chairman welcomed."

**Motion by Mr. Morganroth**

**Seconded by Mr. Canvasser to approve the Minutes of the BZA meeting of February 13, 2018 as amended.**

**Motion carried, 7-0.**

VOICE VOTE

Yeas: Miller, Canvasser, Hart, Jones, Judd, Lillie, Lyon

Nays: None

Absent: Morganroth

**T# 03-19-18**

**195 BALDWIN**

**Appeal 18-08**

The owners of the property known as 195 Baldwin request the following variances to renovate and construct an addition on an existing non-conforming home.

A. **Chapter 126, Article 2, Section 2.08** of the Zoning Ordinance requires the front yard setback is the average of homes within 200 ft. The required front yard setback for this property is 28.80 ft. The existing setback is 11.00 ft.; therefore, a variance of 17.80 ft. is requested.

B. **Chapter 126, Article 2, Section 2.08** of the Zoning Ordinance requires a minimum rear yard setback of 30.00 ft. The existing setback is 5.00 ft.; therefore, a variance of 25.00 ft. is requested.

C. **Chapter 126, Article 2, Section 2.08** of the Zoning Ordinance requires a minimum combined front and rear setback of 55.00 ft. The existing combined setback is 16.00 ft.; therefore, a variance of 39.00 ft. is requested.

D. **Chapter 126, Article 4, Section 4.74 (C)** of the Zoning Ordinance requires the minimum distance between structures on adjacent lots of 25% of the total lot width. The required distance between is 43.75 ft. The proposed is 40.71 ft.; therefore, a variance of 3.04 ft. is requested.

E. **Chapter 126, Article 4, Section 4.75 A (1)** of the Zoning Ordinance requires that the attached garage be set back a minimum of 5.00 ft. from the portion of the front façade that is furthest set back from the front property line. The proposed garage is 6.76 ft. in front of the furthest front facade. Therefore, a variance of 11.76 ft. is requested.

This property is zoned R-2.

Mr. Morad explained This home was granted variances previously in 2012 to construct a new single-family home with an attached garage. The owners are requesting similar variances that were initially applied in 2012, along with two additional for the proposed addition and renovation. The first three variances were granted in 2012. However because the variances were tied to the plans the applicants need to request them again with their proposed renovation.

Variance D is required because a corner of the house is now closer to the adjacent structure than the minimum would allow.

With regard to variance E, since the first three variances were granted, a new ordinance came into effect stating that the front face of the garage must be 5 ft. behind any portion of the front facade that is furthest set back from the front property line.

Chairman Lillie received clarification that the lot is three times the width of the depth. The lot is much wider than the existing lots. Mr. Morad explained for Mr. Canvasser that the proposed renovation does not go outside the boundaries of the original construction.

Mr. Travis Bray, the homeowner, pointed out their lot is currently non-conforming due to its flag shape and its orientation to the street, which are some of the reasons for the initial variances in 2012. After the house was built they had two children and the house became no longer feasible for them.

So for the past year they have worked to test out a variety of concepts with Mr. Joe Mosey, their architect; TSA, the original builder; and an interior designer. One of their early proposals was 2.5 stories on the north side, but that would have impacted all of their neighbors. Therefore they decided on a lower roof and flatter lines that would achieve the same capacity without going up. It pushes out the north side of the house 5 ft. into the driveway and that is what causes the home to be 3 ft. closer to the west neighbor. Even though it is still within the approved setback it does encroach on the distance between homes that was established. Overall, they feel this is the least intrusive option that meets their requirements. They are adding 400 sq. ft. The 24% lot coverage is below the 30% maximum allowed.

Mr. Bray explained for the Chairman one of the reasons they cannot set the garage back 5 ft. to the south where it is today is because that would not allow the rooms inside to be the size they need them to be.

Mr. Morganroth noticed from the plans that the inside depth of the side entrance garage is about 25.5 ft. He thought generally 22 ft is sufficient. That extra 3 ft. might be one of

the reasons why they are encroaching toward distance between homes. He asked if that could be mitigated.

Mr. Joe Mosey, Architect , explained there is a mechanical room just inside the garage. Also, they added an additional bedroom above which pushes the need for extra space to the north. Mr. Morganroth suggested that each bedroom could lose a foot and still be nicely sized for a typical home. Therefore he asked why they cannot conform, besides wanting larger bedrooms and a garage that is deeper than average.

Mr. Bray agreed they could probably have smaller bedrooms.

In response to Mr. Morganroth, Mr. Johnson said the request for distance between homes would not affect the neighbor in terms of their request to enlarge their home. Their required distance between structures would be substantially less than what is required here because their lot is not as wide.

Further discussion brought out that distance between houses noted on the plans was measured from the garage door area and not from the second-story projecting portion of the home as it should have been.

Therefore Chairman Lillie stated the variance was not properly advertised. The board cannot approve more than was advertised. The applicants agreed to come back with revised plans.

**Motion by Mr. Jones**

**Seconded by Mr. Lyon that upon the request of the applicants, this matter, Appeal 18-08, 195 Baldwin, be tabled to the next regularly scheduled meeting of the BZA.**

**Motion carried, 7-0.**

VOICE VOTE

Yeas: Jones, Lyon, Canvasser, Hart, Judd, Lillie, Morganroth

Nays: None

Absent: Miller

**T# 03-20-18**

**34915 WOODWARD AVE.**

**Lady Jane's Hair Salon**

**Appeal 18-09**

The owners of the property known as 34915 Woodward Ave. request the following variance to allow two signs on the exterior of the building:

A. **Chapter 126, Article 02, section 1.10 B (4) (d) Overlay Sign Standards** states that each business whose principal square footage is on the first story may have one sign per entry. This tenant currently has one entrance located at the southeast corner of the building. Therefore, a variance to allow two signs for a tenant with one entrance is requested.

This property is zoned B-4/D-4.

Mr. Baka noted that the applicant was originally approved for two signs based on a building permit application that included an additional entrance. Upon final site inspection by the Planning Department it was revealed that the second door was not installed, but two signs were. So, under the Overlay Sign Standards either the Woodward Ave. sign or the Brown sign are required to come down, or a variance granted.

Mr. Baka went on to explain that when the Overlay Standards were applied the staff at the time was not correctly applying the sign portion. Rather, the signs were treated as for any other building outside of the Overlay.

Mr. Jones received verification that the subject signage was not erroneously granted by the City. The approval was conditioned upon what the plans said at the time, but this applicant never built the second entrance. Responding to Mr. Morganroth, Mr. Baka thought this signage would be in compliance under the Overlay Standards if they had the extra door, based on square footage. He further explained that access through the neighboring property, Birmingham Roast, is not considered a separate entrance because it is not an exterior entrance directly attached to the public right-of-way.

Mr. Judd received clarification from Mr. Baka that the decision to go to one entry door was not done with the knowledge and consent of the City. Mr. Baka explained that adding a new door would be difficult because of the stone base below the windows and the difference in grade that would require them to do something with the sidewalk in order to enter the door. He went on to say the applicant is allowed 18 sq. ft. of window signage per frontage. Since this is a corner space, they could have 36 sq. ft. That could be an alternative for them.

Mr. Tim McCollum, President of Lady Jane's Haircuts for Men, indicated this is their world headquarters for their corporate operations and home of their flagship salon. Lady Jane's owns and operates more than one hundred stores nationwide. Birmingham Roast and Lady Jane's are the same ownership. Only glass separates the two entities. The reason they didn't add the door is that when the Fire Marshall came through he said the glass door between the two spaces cannot be locked. They thought that made Birmingham Roast a legitimate entrance/exit for Lady Jane's for Fire Code purposes.

Mr. McCollum went on to make the following points:

*Article 8 section 3.c.1*

- The building can hold multiple signs without looking peculiar.
- Woodward Ave. and Brown are both very important to their corporate branding and recognition of their retail salon.
- Maybe there is a flaw in the Overlay Sign Ordinance. Multiple corner locations around Birmingham have signs on both sides of the building.

*Article 8 section 3.c.2*

- Their request for an additional sign does not cause any material detriment to Jax Car Wash, PNC, or Powerhouse Gym (their neighbors in immediate vicinity).
- The flow of customers for the salon and corporate actually evenly disperse amongst the Lady Jane's entrance and Birmingham Roast. They are shared entrances.

*Article 8 section 3.c.4: Hardship*

- 70,000 vehicles per day pass by between Woodward Ave. and Brown.
- Substantial walking traffic on both streets.
- Eyeballs means \$\$\$.
- Loss of salon revenue.
- Significant loss of the corporate brand to their intellectual property.
- Substantial cost and grade change to sidewalk to add another door.

*Final Requests*

- Ask that Article 8 section 3.c.3 be amended to allow corner properties a sign on each side.
- Consider that the Fire Marshall deemed Birmingham Roast an exit for Lady Jane's and vice versa.
- Consider that the entrance/exit off of Peabody could also suffice as additional entrance to Lady Jane's and Birmingham Roast.

Chairman Lillie advised this Board does not have the ability to amend the Ordinance. That is the charge of the City Commission.

In response to Mr. Lyon, Mr. McCollum indicated that Birmingham Roast has one sign. Answering Mr. Canvasser, he specified this is one lease space with two entities operating.

Mr. Morganroth inquired if there is a place between the two businesses where the door would fit that would be less cost prohibitive. Mr. McCollum answered there will be a grade issue no matter what. Mr. Baka added the door doesn't have to be in any specific location relative to the sign. They could have their door on Woodward Ave. Mr. McCollum confirmed that currently there is glass in the spot where the door would have been. They could put the door in and still make it work but it would look funny.

Mr. Jones asked what the issue is relating to this real estate that makes them believe they have a practical difficulty complying with the Ordinance. Mr. McCollum responded that if they put in a door it is very likely they would lose one of their haircutting stations. However, Mr. Jones noted their original plan had a door. He went on to explain that financial difficulties don't constitute essentially their practical difficulty. The grade was always there and their application showed two doors.

Mr. McCollum said he believed that what the Fire Marshall told them obviated a clear plan for an exterior second door. However he never verified that with the City. He made a mistake by thinking they were in the clear,

Mr. Judd noticed that every statement that Mr. McCollum has made seems to be founded with an emphasis on commercial enterprise. Additionally he did not believe the Southeast Michigan Council of Governments would agree with the statement that 70,000 vehicles drive by every day. That figure is a little high.

At 8:45 p.m. there was no one left in the audience to comment.

**Motion by Mr. Judd**

**Seconded by Mr. Jones in regard to Appeal 18-09, 34915 Woodward Ave., the appellant seeks variances pursuant to Chapter 86, Article 01, section 1.10 b (4) (d) dealing with the Overlay Sign Standards at the stated location.**

**Mr. Judd would move to deny. He does not feel that the appellant has in any way offered any proof or evidence that strict compliance with the Ordinance would unreasonably prevent the owner from using the property for a permitted purpose and would render conformity with such restrictions unreasonably burdensome.**

**He would note that through the questioning by the Design Review Board, testimony from the City Planner, and testimony from the appellant, these decisions were made to omit a door with full knowledge that there was an agreement, plans and that the appellant showed a certain degree of caprice in ignoring that agreement.**

**Mr. Judd does not feel that granting this variance would do substantial justice to the applicant or to other property owners.**

**He does not feel that the plight of the owner is due to unique circumstances of the property and not to the general conditions in the area. The petitioner has mentioned a lack of uniformity dealing with grade in the area. He also has testified that at no time did he approach the City and state that he wished to change the grade, change the design, or fail to use or install one of the doors.**



**The fourth element that we always have to deal with is whether the problem is self-created. Mr. Judd has rarely seen a problem that is so self-created as this one. Therefore he would once again move to deny.**

Mr. Canvasser indicated he would support the motion. There are three signs with only two entrances, so he agrees this is completely self-created.

Mr. Morganroth was also in support of the motion. The applicant has acknowledged that the is prepared to keep the sign by putting in an extra door. That is a resolution that allows the City to have its ordinances and the applicant to have his sign.

Mr. Jones said he supports the motion. He noted that the BZA imposed the ordinances on Power House Gym across the street as well.

Mr. Lyon agreed that the Overlay Sign Ordinance is not perfect. He also agreed that the appellant needs signage. However, Birmingham does not want a plethora of signs. He will support the motion for the reason that there is no practical difficulty shown here. There is nothing unique about this building versus other buildings in the Overlay District.

Chairman Lillie said he would also support the motion. In this instance it was not a case where the City misapplied the Ordinance. The petitioner submitted plans showing two doors but the build-out had only one door. For those reasons he is in support of the motion.

**Motion to deny carried, 7-0.**

ROLLCALL VOTE

Yeas: Judd, Jones, Canvasser, Hart, Lillie, Lyon, Morganroth

Nays: None

Absent: Miller

**T# 03-21-18**

**CORRESPONDENCE** (none)

**T# 03-22-18**

**GENERAL BUSINESS** (none)

**T# 03-23-18**

**OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA** (no public was left)

**T# 03-24-18**



